



STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2012-45

Legistar #: 20121047

Board of Zoning Appeals Hearing: Monday, November 19, 2012 – 6:00 p.m.

Property Owner/Applicant: Laura Caro
295 Vance Circle
Marietta, GA 30060

Address: 295 Vance Circle

Land Lot: 11600 District: 16 Parcel: 0220

Council Ward: 4 Existing Zoning: R-4 (Single Family Residential 4 units/acre)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to increase the maximum height of a fence within a yard fronting a public street from 6' to 8.' [Section 710.04 (A)(1)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.

3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



Front of subject property from Vance Circle



View of fence from Vance Circle



Rear of subject property along North Marietta Parkway



Rear of subject property along North Marietta Parkway

Recommended Action:

Approval, with stipulations. The applicant, Laura Cano, is requesting variances to allow her to keep a fence on her property at 295 Vance Circle. The subject property is zoned R-4 (Single Family Residential – 4 units / acre) and contains road frontage along both Vance Circle and North Marietta Parkway; however, the only vehicular access is from Vance Circle. The applicant removed a damaged 8-foot privacy fence and replaced it with a new 8-foot privacy fence, and wishes to be able to keep the fence along her rear property line along North Marietta Parkway. The fence was erected several months ago, but was recently noticed by Code Enforcement when a Marietta BLW crew removed the vegetative screen - trees and brush - that was obscuring the fence from view along North Marietta Parkway.

In residentially zoned districts the ordinance regulating fences was recently changed to allow a six foot (6') tall fence made of decorative material (wood, brick, stone, or wrought iron) in any side or rear yard fronting a street. There is also a requirement for the fence to be set back from the right of way line at least two feet. Because of the high volume of traffic, as well as the noise from the traffic, along North Marietta Parkway, the applicant would like to keep the wooden privacy fence that would meet the requirement for material and setback but not for height.

Staff discussed the possibility of having Ms. Caro landscape the area on the North Marietta Parkway side of the fence, but she is concerned that another Marietta BLW crew, who are responsible for maintaining the right of way, may destroy the landscaping as happened recently.

There have been three (3) cases in which variances have been granted to allow fences up to 8 ft. in height, as described below:

- ***V2011-07: 651 St. Anne's Road*** ***March 28, 2011***
 - (1) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
 - (2) Variance to allow a wooden fence to be within 2 feet of the public right-of-way.
- ***V2011-08: 213 Maxwell Avenue*** ***April 25, 2011***
 - (1) Variance to allow an 8' tall wooden fence along the yard fronting a public/private street;
 - (2) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
 - (3) Variance to allow a wooden fence to be within 2 feet of the public right of way
- ***V2012-14: 1285 Cobb Parkway North*** ***April 30, 2012***
 - (1) Variance to increase the allowable height of a fence from 8' to 10'.

The vegetative screen that was removed provided a better visual buffer for the pedestrians along North Marietta Parkway than the 8' privacy fence will provide. However, allowing the proposed fence should not affect any of the surrounding properties, as many of the properties along North Marietta Parkway have similar fences. Additionally, exceptional circumstances apply to this property, as it is a double-frontage lot with the rear yard area abutting a heavily used roadway.



Because exceptional circumstances apply to this property, as it is a double-frontage lot with the rear yard area abutting a heavily used roadway, and the proposal should not be detrimental to public safety, the surrounding properties, or overall community, ***staff recommends approval of this variance request with the following stipulations:***

1. ***One row of 2" caliper evergreen shrubs must be planted between the property line and fence.***
2. ***The fence must be stained.***